STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	**)**	
On Its Own Motion	**)**	
	)	**01-0485**
Adoption of 83 Ill. Adm. Code 732	**)**	

INITIAL BRIEF ON REHEARING OF ILLINOIS BELL TELEPHONE COMPANY

Illinois Bell Telephone Company ("Ameritech Illinois") submits this brief in support of the three issues on which it sought rehearing in this proceeding. For the reasons explained below, the Commission should (1) eliminate the seven-day limit on the work stoppage exemption in § 732.10 of the proposed rules; (2) revise the customer education requirements of § 732.50; and (3) eliminate, or substantially revise, the credit information reporting required under § 732.60.

I. The Commission Should Eliminate the Seven-Day Limit on the Work Stoppage Exemption.

The Part 732 Customer Credit rules impose the obligation on local exchange telecommunications carriers to extend credits to customers for failure to meet certain service installation and repair timing deadlines, although the existence of certain specified "emergency situations" (see § 732.10) exempts carriers from that obligation. Although the rule includes a "strike or other work stoppage" as an emergency situation, it also limits the exemption in that circumstance only to the first seven calendar days of the strike or work stoppage. An exemption covering only the first week of a work stoppage is unreasonably restrictive; the time limit should be eliminated or greatly expanded.

As an initial matter, it is clear that a strike is an "emergency situation." The current version of § 732.10 includes "a strike or other work stoppage" among the events qualifying as an emergency situation. (See Tr. at 299). No party is disputing this characterization or has sought rehearing on it. (See Tr. at 300-03). Moreover, it is equally clear that the purpose of the time limit in § 732.10 is to allow the carrier to settle the strike or make other arrangements to serve its customers. (See Tr. at 328). The seven-day limit, however, is clearly inadequate to fulfill that purpose and does not go far enough to accommodate a real-life strike as a matter of policy, commercial practice, or common sense.

First, as a matter of policy, the Commission's Service Quality Rules are not the proper forum to establish time frames that may have a significant effect on labor negotiations. Collective bargaining and labor laws should govern the context of labor negotiation, not an administrative rule regarding service quality. As a practical matter, the limitation of the work stoppage exclusion to the first seven days could create artificial and unwarranted leverage regarding collective bargaining. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 94-130). Specifically, if "emergency situations" were limited to seven days, a labor union which might otherwise accept a good faith contract offer might instead stop work for more than seven days, simply to gain the artificial leverage that would arise from exceeding the seven-day limit. This would negate the alleged purpose of the seven-day limit – to allow the company a period of time to avoid the work stoppage. As a result, the seven-day limit could actually preclude a carrier from setting the dispute quickly. (Id., lines 126-27).

Moreover, the seven-day limit effectively assigns blame to the carrier for the work stoppage after seven days, regardless of actual circumstances. (Panfil, Am. Ill. Ex. 1.1, lines 57-58). The carrier thus could be penalized by having to pay credits under Part 732, as well as facing potential penalties under Part 730,[1] even though the strike occurred through no fault of the carrier. See Tr. at 284-85. Removing the seven-day limitation would simply return the parties to the situation that existed prior to the adoption of Part 732; it would represent no change in the relative baseline positions of employers and labor unions. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 156-58.)

Indeed, the one-week limit appears to violate federal labor law, because arbitrarily limiting the duration of strikes or work stoppages that are included as "emergency situations" would improperly intrude into the collective bargaining process, and would therefore be contrary to the National Labor Relations Act ("NLRA"). See 29 U.S.C. §151 et seq. In the context of the NLRA, the Supreme Court has developed two preemption doctrines that limit the ability of states and municipalities to regulate activities protected by the NLRA or to interfere with policies implicated by the structure of the NLRA. See Cannon v. Edgar, 33 F. 3d 880 (7th Cir. 1994) (discussing preemption doctrines). As discussed in detail in the briefs submitted by Verizon and the Illinois

[1] The strike exemption language proposed in the Part 732 rules is also found in the proposed Part 730 rules being considered in Docket No. 00-0596.

Telecommunications Association, these doctrines are violated by the inclusion in § 732.10 of an artificial limitation on the duration of a work stoppage within the definition of "emergency situation."

Second, the time limitation for work stoppages is inconsistent with accepted commercial practice. The purpose of the "emergency situation" exception is to relieve carriers from paying credits for service problems that are beyond their reasonable control. This is the same purpose served by force majeure clauses often included in contracts, including contracts approved by this Commission. Such contracts frequently include work stoppages among the conditions that will excuse performance. For example, the current SBC 13-state interconnection agreement provides as follows (emphasis added):

> No Party shall be responsible for delays or failures in performance of any part of this Agreement (other than an obligation to make money payments) resulting from acts or occurrences beyond the reasonable control of such Party, including acts of nature, acts of civil or military authority, any law, order, regulation, ordinance of any Governmental Authority, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, hurricanes, floods, work stoppages, equipment failures, cable cuts, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (individually or collectively, a "Force Majeure Event").

This language is typical of Ameritech Illinois' interconnection agreements, and has been entirely non-controversial. (Panfil, Am. Ill. Ex. 1.0, lines 160-83). The Commission has routinely approved these agreements, and neither the parties nor the Commission have ever suggested that such provisions are in any way inappropriate. (Id., lines 183-85).

Language of this sort is also quite common in other contracts and tariffs, including those of companies regulated by the Commission. For example, the Commission approved the following force majeure language in the tariffs of two gas pipeline companies:

> The term "force majeure" as used herein shall mean acts of God, strikes, lockouts or other industrial disturbances; acts of a public enemy, wars, blockades, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storm (including but not limited to hurricanes or hurricane warnings, crevasses, floods, washouts; arrests and restraints of the government, either federal or state, civil or military, civil disturbances . . . .

Order, Illinois Gas Transmission Co. and Nuevo Energy Co., Ill. C.C. Dkt. 98-0510, App. B at § 12.2 (Sept. 28, 1999) (emphasis added). Similarly, a United States District Court enforced a coal supply contract to which Central Illinois Public Service Company was a party in Central Illinois Public Service Co. v. Atlas Minerals, Inc., 965 F. Supp. 1162 (1997). That contract provided that force majeure included:

> Any causes beyond the reasonable control of the party affected thereby, such as acts of God; acts of the public enemy; insurrections; riots; strikes; labor disputes; fires; explosions; floods; breakdown or damage to plants, equipment, or facilities; accidents of navigation; interruptions to transportation; river freezeups; embargoes; orders or acts of military or civil authority (executive, judicial, or legislative), including but not limited to, any regulation, direction, order, or request (whether valid or invalid) made by any governmental authority or person acting therefore . . or other such causes of a similar or dissimilar nature . . . .

Id. at 1166 (emphasis added). None of those contracts or tariffs imposes time limits on the force majeure event.

Third, the seven-day exemption for work stoppages is undercut both by common sense and the testimony presented on rehearing. The testimony of Staff witness McClerren demonstrated that there was nothing "magic" about a seven-day interval (see

Tr. at 304-05), and he testified that the purpose of the interval was to give the carrier time to settle the strike or make other arrangements to service its customers. (Tr. at 328).

If the admitted purpose of the interval is to allow the carrier to settle the strike, then it is only reasonable to give the carrier enough time to do so, rather than to impose an arbitrary limitation (or, as Mr. McClerren put it, to draw “a line in the sand” (Tr. at 306)). This makes particular sense where, as Staff admits, Illinois carriers and unions have good track record of working together to resolve strikes (Tr. at 321) and where the short duration of the current interval would cause a blameless carrier to be penalized if the strike extends more than seven days. (Tr. at 284-85). The Commission thus should place <u>no</u> time limit on how long a strike or other work stoppage qualifies as an emergency situation under § 732.10.

In the alternative, common sense suggests that the Commission, in setting the time interval, should consider how long it might take a carrier to settle a strike or make other arrangements to provide normal repair and installation services to its customers. The evidence presented on rehearing shows the following. First, the testimony and Illinois history suggest that having the carrier’s management employees fill in during a strike is insufficient to provide acceptable service. (Dougherty, ITA Ex. 1.0 (revised), Q&A 13; Tr. at 345). Second, the testimony also shows that training replacement workers would take, at a minimum, 120-180 days. (Dougherty, ITA Ex. 1.0 (revised), Q&A 15-16). Third, Staff admitted that a carrier could only return to normal service levels in a lengthy strike after its unionized employees returned to work (Tr. at 329-30) and that history is relevant in determining how long it might take employees to return to work during a strike in the future. (See Tr. at 331). The testimony on the history of telecommunications strikes in Illinois shows that no strike in Illinois settled in seven days (Dougherty, ITA Ex. 1.0 (revised), Q&A 8-11; Tr. at 331) and that the average strike length was 94 days. (Dougherty, ITA Ex. 1.0 (revised), Q&A 10). Based on this record, Ameritech Illinois takes the alternative position that the Commission should increase to at least 90 days the time interval under which a strike or work stoppage qualifies as an "emergency situation."

II. The Commission Should Revise the Customer Education Requirements.

The proposed Part 732 rules require customer notification of the carriers' service quality obligations, and of the availability of credits for failure to meet those obligations, in a variety of ways. Section 732.20(e) requires that carriers' service representatives notify customers of the requirements when they call to request a repair or installation. Section 732.50(a) requires carriers to include prescribed information about the credits in their directories and to send out quarterly bill messages or inserts until carriers update their directories to include the information. Section 732.50(b) requires the distribution of prescribed information about the credits in additional quarterly bill messages or inserts. Finally, § 732.50(c) requires carriers to use other forums for public education such as company websites and voice response units.

Although Ameritech Illinois does not object to including service quality information in its directories, providing an annual bill message on the issue, and advising customers of the requirements directly when they request repairs or installation, the cumulative impact of the customer education obligations in the rules is overly burdensome. Moreover, given the limited space available for customer messages in Ameritech Illinois' bills, the duplicative obligations may infringe on the company's First Amendment rights.

Ameritech Illinois has expended considerable effort in designing its bills and has researched customer preferences and behavioral limitations, to attempt to produce a bill format that can meet customer needs, regardless of the customer's size and the services provided. (Panfil, Am. Ill. Ex. 2.0, lines 151-65; Tr. at 192-93). This research indicated that the larger the amount of messaging that appears on a bill, the more likely customers are simply to ignore all of it, throwing out what Staff and GCI would consider to be "good" information (customer education messages) along with what they characterize as "bad" information (advertising and promotional messages). (Panfil, Am. Ill. Ex. 1.0 (revised), lines 207-08; Panfil, Am. Ill. Ex. 2.0, lines 156-60). Accordingly, in response to customer concerns, Ameritech Illinois limits the amount of messaging that appears on its bill and consolidates that messaging to a single location on the bill. (Panfil, Am. Ill. Ex. 2.0, lines 151-55; Tr. at 192-93). In particular, Ameritech Illinois has limited its bill message slots to a maximum of seven per bill, or a total of 84 per year. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 204-06).[2]

Ameritech Illinois uses its bill message slots for several types of messages: 1) regulatory mandates, such as information on the customer's pre-subscribed toll carriers;

2) other legally required messages regarding such items as rate changes or the Lifeline or Linkup programs; 3) public service or customer service announcements, such as messages about Earned Income Tax Credits or online billing; and 4) advertising messages. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 212-43; Panfil, Am. Ill. Ex. 2.0, lines 126-39; Tr. at 173-74; see also Boswell, Verizon Ex. 1.0, lines 146-57). Advertising messages have the lowest priority among message types and are not always included each month. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 243-44).[3]

Required messages take up a substantial portion of the available message slots. Federally mandated messages take up three of the seven slots each month (or 36 of the 84 slots available annually). (Panfil, Am. Ill. Ex. 1.0 (revised), lines 215-22; Panfil, Am. Ill. Ex. 2.0, lines 127-30). Ameritech Illinois also must include bill messages or inserts at least once a year on the following topics: the Lifeline program; a disclosure statement regarding 900/976 calls; slamming information; the Universal Telephone Service Assistance Program; and, in the future, the digital divide program. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 223-25, 260-64; see also Boswell, Verizon Ex. 1.0, lines 138-44). In addition, the company must use a certain number of bill slots each year to notify customers of such matters as rate changes or area code changes. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 224-25; Boswell, Verizon Ex. 1.0, lines 154-57).

[2] Verizon has only six bill message slots per month. Boswell, Verizon Ex. 1.0, line 146.
[3] For example, Mr. Panfil testified that his Ameritech Illinois bills for a four-month period included only two advertising messages among the 27 messages that appeared. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 244-46). This represents seven percent of the message slots.

Under the proposed version of § 732.50, Ameritech Illinois could be required to devote four message slots and four bill inserts to information on service quality requirements during the first year the rule is in effect and four message slots (or about five percent of available slots) to such information in future years, once service quality information is printed in all Ameritech Illinois directories. (See Panfil, Am. Ill. Ex. 1.0 (revised), lines 209-10; Tr. at 145). If these prescribed service quality messages are added to the other types of required messages, a minimum of 40 bill message slots will be occupied by information mandated by government entities each year. That will leave Ameritech Illinois with only 44 message slots (or 52 percent of the annual total) for its own use.[4]

Staff provides several justifications for this accumulation of notice requirements. First, Staff witness Jackson testified that customers need to be given this information repeatedly to monitor carriers' application of credits and to question their bills. (Jackson, Staff Ex. 2.0 (revised), lines 261-76). She also stated that an annual bill notice would be insufficient to educate customers new to the state about the service quality requirements. (Id., lines 276-78). Ms. Jackson also testified that information about the requirements would be "more beneficial to consumers" than other bill messages that Ameritech Illinois currently provides (id., lines 237-41), although she admitted that this value judgement was simply her opinion. (Tr. at 241). Ms. Jackson also admitted that she did not survey

[4] In reality, this number will probably be less than 50 percent because of the need to advise customers about such matters as future rate changes or area code changes and other requirements such as the annual requirement established by 220 ILCS 5/13-301(e) to inform customers of their right to a report describing which telecommunications service offering would result in the lowest bill for that customer.

customers to see how they responded to different types of bill messages (Tr. at 241)[5] and that Staff did not analyze whether customers actually read bill messages. (Tr. at 240). In addition, she testified that having a carrier's service representative advise the customer of the service quality requirements when the customer called to request an installation or repair was the most direct way to notify the customer about the requirements. (Tr. at 243).

The customer education requirements of the proposed Part 732 rules are unduly burdensome, particularly because of their cumulative and duplicative nature. Requiring Ameritech Illinois to devote five percent of its annual bill message space to one topic – and to send out four additional bill inserts on that topic during the first year – is excessive, especially since the company also is required to provide the same type of information directly to customers when they call to request repairs or installation. Staff admits that this verbal contact is the most direct way to convey information to customers about the service quality requirements. (Tr. at 243). Indeed, this verbal notification is the most effective way to address Staff's cited justifications for the duplicative education requirements. New customers moving to Illinois from another state are immediately advised of service quality information they might otherwise not have known when they call to initiate service, and current Illinois residents who request an installation or repair are immediately given the information they need to monitor their bills. The information provided directly by the customer service representative gives both new and existing

[5] GCI witness Kolata also testified that he did not conduct any customer survey to develop his position in favor of the proposed customer education requirements. (Tr. at 215).

customers sufficient information to put them on notice that they should watch their bills for any applicable credits.[6]

Moreover, the customer education requirements imposed by the Part 732 rules raise constitutional issues because a carrier's bill messages or inserts – as well as all the other materials it may use to communicate with its customers – enjoy protection under the First Amendment. The Commission's authority over this topic is correspondingly limited. See, e.g., Central Hudson Gas & Elec. Corp. v. Public Service Comm'n, 447 U.S. 557 (1980) (holding that prohibition on promotional advertising violated First Amendment); Pacific Gas & Elec. Co. v. Public Utility Comm'n, 475 U.S. 1 (1986) (holding that requirement that utility include consumer group's message in its bills violated First Amendment).

The Part 732 rules implicate Ameritech Illinois' First Amendment rights in two ways. First, the rules compel the company to speak on a particular topic multiple times and through multiple means. Second, the accumulation of regulatory mandates requiring Ameritech Illinois to advise its customers of various topics ultimately serves to limit the company's speech substantially. If the current rules go into effect, the company will likely be left with less than 50 percent of available bill message slots to communicate its own messages to customers.

[6] The bill credits are automatic and require no action on the part of the customer. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 264-65). A customer thus should easily be able to tell whether she has received a credit.

United States Supreme Court cases applying First Amendment principles to commercial speech have followed no clear path, resulting in an assortment of possible legal tests. Compare Ibanez v. Florida Dept. of Business and Professional Regulation, 512 U.S. 136, 142 (1994) (regulation of speech permissible under Central Hudson only if State shows restriction directly advances State interest in manner no more extensive than necessary to serve that interest), with Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio, 471 U.S. 626, 651 (1985) (State may impose disclosure requirements on advertisers that are reasonably related to State interest in preventing consumer deception). In a case with some parallels to this proceeding, the United States Court of Appeals for the Eleventh Circuit applied both the Central Hudson and Zauderer tests to strike down a state's compelled disclosure requirement in Tillman v. Miller, 133 F.3d 1402 (11th Cir. 1998).

The Georgia regulation at issue in Tillman required any lawyer using television advertisements to solicit potential worker's compensation clients to include a notice of prescribed content and typeface to appear on the screen for at least five seconds of the advertisement. See 133 F.3d at 1403 n.1. The notice described the legal penalties under Georgia law for making false worker's compensation claims. Id. The Eleventh Circuit concluded that the speech compelled by the State's regulatory scheme imposed too much of a burden on the attorney's First Amendment rights. The court found that the attorney's advertisement was not misleading and that the state's compelled message was not "tied to an inherent quality" of what the attorney was trying to sell, but was instead a general education message. Id. at 1403. In addition, the court found that the burden imposed by the regulation was "not a trifling one," because the speech compelled by the state took five seconds of the attorney's 30-second advertisement. Id. at 1404 n.4.

Applying the reasoning of Tillman here also suggests that the burden imposed on Ameritech Illinois by the Part 732 customer education requirements could raise constitutional concerns. The record contains no suggestion that Ameritech Illinois' bills (or existing bill messages) are misleading. The service quality information is also a general education message and is not tied to "an inherent quality" of the material Ameritech Illinois otherwise includes in its bills, such as the customer's charges or the advertising or public service messages. And the volume of compelled speech required by Part 732 is not "trifling," since it would require the company to devote five percent of its annual bill message space to a single topic (and it would likely result in more than 50 percent of bill message space being occupied by government-required messages).

Because the current Part 732 rules impose unnecessarily duplicative layers of customer education regarding service quality requirements and because the rules raise First Amendment issues, the Commission should revise the rules to reduce the burden they impose. No party objects to the requirements to publish customer education materials in directories (§ 732.50(a)) and in additional locations such as company websites (§ 732.50(c). No party objects to limited (i.e., once or twice per year) requirements to communicate educational material to customers via bill messages or inserts. The Commission, however, should mitigate the burden of the current rule by reducing the number of bill messages or bill inserts required by § 732.50(b) (and initially

§ 732.50(a)) to one per year, as proposed by Verizon and Ameritech Illinois. Alternatively, it should eliminate the requirement for direct customer notification during installation and repair calls required by § 732.20(e), as proposed by McLeodUSA.

III. The Commission Should Eliminate, or Substantially Revise, the Credit Reporting Information Required under Section 732.60.

The proposed Part 732 rules impose the obligation on carriers to report data on service quality credits (and exemptions from those credits), in addition to data on performance. Reporting credit and credit exemption information clearly is not required by the Public Utilities Act, and it would be redundant and burdensome. Moreover, Ameritech Illinois will not be able to implement the proposed reporting requirements as of the effective date contemplated for the version of the rules that will result from this proceeding.

First, the Act simply does not require that carriers report data regarding service quality credits and exceptions. In adopting Section 13-712 of the Act, the General Assembly sought to ensure that the reporting requirements the Commission adopted would continue the same type and level of service quality reporting that was already maintained by carriers, but would not create any new record-keeping requirements. As a result, the General Assembly decreed that carriers report their service quality <u>performance</u> – not credits – to the Commission, "disaggregated for each geographic area and each customer class of the State for which the telecommunications carrier internally monitored performance data as of a date 120 days preceding the effective date of this amendatory Act . . ." 220 ILCS 5/13-712. The Commission has not found – and indeed could not find – that the Act requires carriers to report data regarding service quality credits, and no party can credibly argue that the Act imposes such a requirement.

The Commission instead based its decision to require the reporting of credits, in addition to actual performance, on the finding that "[t]he amount a LEC pays in credits for violating the terms of Part 732 can be easily used to monitor performance. For example, the more a LEC pays in credits, the poorer the LEC's performance." (Second Notice Order, p. 58 (Nov. 29, 2001)). However, carriers will already be reporting service quality to the Commission directly, for each of the criteria for which credits must be paid. Credit information would simply measure the same performance indirectly – and less accurately. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 300-04). As the Commission concluded in Docket 98-0453, a single, direct measure of service quality performance is both more accurate and more efficient than using additional, indirect measures. (Order, Ill. C.C. Dkt. 98-0453, p. 8 (Feb. 9, 2000)).

Moreover, the testimony showed that credits might depend more on the size or nature of a carrier than its actual performance. For example, it would make little sense to compare directly the total credits paid by a large carrier to a small one. (See McClerren, Staff Ex. 1.0 (revised), lines 296-97 (contrasting credit amounts paid by large and small carriers)). Comparisons between urban and rural carriers could be equally misleading. And even for an individual carrier, the total amount of credits paid may be influenced largely by growth or loss in access lines served, which could have a larger impact on credits than actual service quality performance. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 309-15). Indeed, GCI witness Kolata admitted that factors such as the number of access lines and weather conditions could impact the credits a carrier might have to provide from year to year. Tr. at 229-30. By contrast, actual performance data are reported on the bases of percentages or averages, and therefore provide a better and more consistent picture of service quality performance than would credit data. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 316-18).

The reporting of credits also may cause more confusion than benefit to consumers. The reporting of credits would add significantly to the already large volume of service quality data that will be published pursuant to the requirements of Part 730. As Ameritech Illinois witness Panfil explained, this huge volume of information, and the publishing of multiple measures of performance for the same service, is likely to result in consumers simply shaking their heads at the overwhelming volume and complexity of information available and simply ignoring it. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 323-29). In fact, the Federal Communications Commission ("FCC") has initiated a rulemaking to reduce the volume of information on service quality it would require carriers to report. (See Panfil, Am. Ill. Ex. 2.0, lines 219-47 (discussing Notice of Proposed Rulemaking in CC Dkt. 00-229)). In particular, the FCC proposed reducing the number of reported service quality measures to the six that it believed to be "of particular interest to consumers." (Panfil, Am. Ill. Ex. 2.0, lines 243-45 (quoting FCC notice)).

Indeed, the testimony offered during rehearing focused almost completely on how the credit data might be useful to the Commission, rather than the customer. (See (Panfil, Am. Ill. Ex. 2.0, lines 209-14; McClerren, Staff Ex. 1.0 (revised), lines 288-290 (stating that data would be useful to Commission); Jackson, Staff Ex. 2.0 (revised), lines 285-86 (discussing "needs of Commission" to obtain data); Tr. at 156-58 (GCI counsel questioning Ameritech Illinois witness Panfil about how credit data would be useful to Commission). Although GCI witness Kolata talked about the public's "need to know" the revenue impact of the Act (Kolata, GCI Ex. 1.0 (revised), lines 226-27, 300), he nowhere explained what benefit the public might derive from that information.[7]

Not only will the required data reporting have great potential for confusion and limited utility, but it also is quite burdensome to Ameritech Illinois in two regards. In particular, both (1) the requirement to report the credit information on a geographically disaggregated basis, and (2) the requirement to report the dollar amount of credits not paid because of exemptions, would require extensive re-programming effort of Ameritech Illinois' computer systems. Moreover, other witnesses testifying in favor of the requirements did not effectively refute their burdensome nature.

Regarding the geographic disaggregation requirement, Ameritech Illinois witness Panfil testified that the service quality data that are available on a geographically disaggregated basis are tracked by the Ameritech Illinois Network organization computer

[7] Both Staff and carrier witnesses testified that the Commission could request the credit information through informal means and that carriers already have provided such information to the Commission. See Tr. at 98 (Boswell), 184 (Panfil), 237 (Jackson), 285 (McClerren).

systems that maintain installation and repair data. Customer credits, however, are tracked by the systems that maintain billing data. The billing systems do not track any data according to the geographic areas by which the Ameritech Illinois Network organization tracks installation and repair activity, nor do they have any means of doing so. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 339-88). Accordingly, to calculate the dollar amount of credits by geographic area, the Network and billing computer systems must be modified either to allow the geographic information to flow from the Network computers through to the billing system; or to allow the credit amounts to flow from the billing system back to the Network computers. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 378-88). In essence, Ameritech Illinois would be required to create an entirely new set of capabilities in its Network or billing systems, simply to provide customer credit data to the Commission on a geographically disaggregated basis.

In contrast, no party presented testimony defending the proposed rule's requirement to present customer credit data on a geographically disaggregated basis. (Panfil, Am. Ill. Ex. 2.0, line 252). There is thus no reason for the Commission to compel carriers to expend substantial resources to produce data that no one particularly wants. Ameritech Illinois has no objection to providing information to the Commission regarding the amount of service quality credits on an aggregated (or statewide) basis (Panfil, Am. Ill. Ex. 2.0, lines 256-57). Such reporting would provide the Commission with sufficient data to assure itself that credits are accurately tracking service quality performance.

Regarding the exemption reporting requirement, Mr. Panfil testified that compliance with the requirement also would cause Ameritech Illinois to expend substantial effort to create new interfaces between its Network and billing computer systems. In particular, because Ameritech Illinois' billing system is designed only to track data that appear on customers' bills in the form of debits or credits, that system currently could make no use of exemption information because such information does not affect the customer's bill. To produce the exemption data, it would be necessary to undertake extensive programming to link the billing system with the Network databases, where information associated with exemptions currently resides. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 394-413). The end result of this effort would simply be "a 'what-if' number" (Panfil, Am. Ill. Ex. 1.0 (revised), line 411), rather than data with real-world utility.

In its rehearing testimony, Staff proposed, in lieu of computing actual dollar amounts of credits not paid because of exemptions, that carriers be allowed to use some estimation or proxy process to calculate the amount of credits not paid because of exemptions. (McClerren, Staff Ex. 1.0 (revised), lines 355-64). This proxy data apparently would be sufficient to give Staff enough information to perform oversight of the carriers' treatment of exclusions. (Id., lines 366-82). Staff's proposal would substantially reduce Ameritech Illinois' burden to comply with § 732.60 (Panfil, Am. Ill. Ex. 2.0, lines 269-72) and, depending on its details, the proposal may be a compromise acceptable to the company.

Staff's proposal for proxy calculation of exemptions implicitly recognizes the burdensome nature of the current reporting requirements in § 732.60. Indeed, neither Staff nor the GCI effectively rebutted the carriers' testimony that the current version of the rule imposed substantial cost on the carriers, while producing little or no benefit to the public. For example, both Staff witnesses testified that they did not conduct any explicit analysis of the cost of the reporting requirements. (See Tr. 260 (Jackson), 292-93 (McClerren)). GCI witness Kolata testified similarly. (Tr. At 221). In addition, given Mr. Kolata's lack of computer programming or billing systems background (Tr. at 210, 228), he presumably would lack the expertise to opine on the carriers' cost to comply with the requirements.

Moreover, the testimony is clear that Ameritech Illinois simply cannot start providing the required information by August 1, 2001 – the effective date proposed by Staff. Mr. Panfil's testimony identified the various steps that Ameritech Illinois must undertake to develop and test changes to its billing system software and stated that the entire process normally takes at least eight months. (Panfil, Am. Ill. Ex. 1.0 (revised), lines 427-56). He also testified that this process could not effectively begin until the specific requirements were identified, and made definite, via the Commission's final order. (Id., lines 457-59). Staff witness Jackson agreed that it was important for Ameritech Illinois to have adequate time to perform the various steps in the software development process accurately. (Tr. at 255-57). Ms. Jackson also recognized that, if the Commission's final order were issued in early July, the carriers would have only four weeks to implement the rules before Staff's proposed effective date of August 1. (Tr. at 254-55).

At an earlier phase in this proceeding, the Administrative Law Judge expressed concern that more time could be required to implement the proposed reporting requirements:

> With regard to Section 732.60, Ameritech recommends that LECs be given until January 1, 2003 to comply with the reporting requirements contained herein. Although the attached rule does not adopt this suggestion, the Commission may want to consider it since it appears that some LECs may have difficulty providing the required information on such short notice.

Memorandum of ALJ Albers to the Commission, p. 2 (Nov. 13, 2001) (emphasis added). Ameritech Illinois has now presented undisputed evidence demonstrating the validity of that concern. At minimum, the Commission should provide carriers with at least eight months from the date of the final order in this proceeding to implement the proposed reporting requirements regarding geographic disaggregation, and at least two additional months beyond that to begin reporting the actual credit amounts related to exemptions. (See Panfil, Am. Ill. Ex. 1.0 (revised), lines 479-90). Alternatively, the Commission should eliminate the geographic disaggregation requirement and allow a proxy calculation of the dollar amount of exemptions. Ameritech Illinois should be able to comply with those modified reporting requirements by the August 1 effective date proposed by Staff. (Panfil, Am. Ill. Ex. 2.0, lines 334-38; Tr. at 183-84).

CONCLUSION

For the reasons explained above and in Ameritech Illinois' testimony, the Commission should (1) eliminate the seven-day limit on the work stoppage exemption in § 732.10 of the proposed rules; (2) revise the customer education requirements of § 732.50; and (3) eliminate, or substantially revise, the credit information reporting required under § 732.60.

Respectfully submitted,

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